IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO(MVA) NO.557 of 2003

Judgment Reserved on:20.4.2007

Date of Decision: 9. 5.2007

Smt. Ritu Sharma ……Appellant

Versus

Madan Lal & another …… Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting? No.

For the Appellant : Mr.Khulbhushan Khajuaria, Advocate.

For respondent No.1: Mr. T.S. Chauhan, Advocate.

For respondent No.2: Mr. H.S. Rawat, Advocate.

Kuldip Singh, J

The petitioner-claimant has assailed the award dated 19.8.2003 passed by Motor Accident Claims Tribunal, Bilaspur, H.P. in M.A.C. Case No.10 of 2002, dismissing the petition by returning the finding that the petitioner had not suffered any injury on account of rash and negligent driving of respondent No.1 of Bus No.HP-24-4567.

The parties in this judgment are referred in the same manner as in the impugned order.

The brief facts as pleaded by the petitioner are that on 9.8.2001 at about 4.45 P.M. the petitioner was going from Bhager towards Bilaspur in car No.HP-24-0932. This car was owned by the husband of the petitioner who was driving the car at that time with care and caution. When car was in the area of Chandpur bus No.HP-24-4567 was noticed coming from the opposite side. The respondent

---

W*hether reporters of Local Papers may be allowed to see the Judgment? Yes*

No.1 was driving the bus rashly and negligently as a result of which the bus struck against the car. The petitioner as a result of the impact of the bus aganst the car suffered extensive injuries and her teeth were dislocated. The petitioner was admitted in District Hospital on 9..8.2001 and was discharged on 17.8.2001. She had spent Rs,50,000/- on her medical treatment. She was 20 years of age at the time of accident. She was looking after the business in the absence of her husband. She had also been attending her house hold job. She claims that from all sources she was earning Rs.5,000/- per month. The petitioner has thus claimed Rs.5,00,000/- compensation for injuries sustained by her on account of rash and negligent driving of bus No.HP-24..4567 by respondent No.1 at the time of accident. The respondent No.2 is the owner of the bus and therefore, the respondent No.2 was vicariously liable for rash and negligent driving of the bus of respondent No.2.

The respondents No.1 and 2 contested the claim. They have admitted the ownership of the bus. It has been submitted that on 9.8.2001, the bus was on his way from Bilaspur to Jhandutta and was being driven by respondent No.1. It has been submitted that respondent No.1 was driving the bus with due care and caution. It is the case of the respondent that the driver of car No.HP-24-0932 was driving the car rashly and negligently and he struck against the bus in Chandpur area. The respondent No.1 had been roped in a false case of rash and negligent driving by the local police at the instance of the petitioner. It has been denied that the petitioner had suffered any injury in the accident. It has been pleaded that the petition is bad for non-joinder of the driver of the car No.HP-24-0932.

The Tribunal in issue No.1 has held that respondent No.1 was not driving bus NO.HP-24-4567 rashly and negligently at the time of the

accident. In issue No.2 the Tribunal has held that petitioner is not entitled to any compensation.

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the petitioner has submitted that respondent No.1 was driving the bus rashly and negligently at the time of accident. In the accident the petitioner has sustained serious injuries. She remained under treatment for long time and has spent huge amount on her treatment, therefore, he has submitted that petitioner is entitled to compensation as claimed in the petition. He has submitted that Tribunal has wrongly rejected the case of the petitioner by holding that accident had taken place due to rash ad negligent driving by the driver of the car and not by the driver of the bus. The learned counsel for the respondents have supported the impugned award by submitting that the learned Tribunal has properly appreciated the facts and the claim petition of the petitioner has been rightly dismissed.

Petitioner has appeared as PW-1and has submitted that in the accident she, her husband and mother-in-law sustained injuries. She suffered fracture of jaw and her teeth were dislocated. She has stated that 5-6 thousand rupees were spent on the treatment. She has denied the suggestion that Vijay Kumar, car driver was driving the car negligently and that he apologized to the bus driver for his mistake. She admitted that many persons gathered on the spot. PW-2 T.D. Tandon, Medical Officer(Dental) has deposed that he examined petitioner on 11.8.2001 in the hospital and her jaw was fractured. She remained admitted from 9.8.2001 to 17.8.2001. He has proved discharge slip Ex.PW-2/A, MLC Ex.PW-2/B of the petitioner. The FIR Ex.PA, Cash memo Ex.PB, receipt hospital Ex.PC were tendered by counsel for the petitioner in evidence. RW-1 Madan Lal, driver of the bus has deposed that on 9.8.2001 he was driving

Bilspur to Jhandutta bus No.HP-24-4567. He saw car coming from the opposite side in high speed. He stopped the bus but the car strucked against the bus. The car driver was under the influence of liquor. The accident has taken place due to rash and negligent driving of the car driver. The car driver on the spot had admitted his negligence. RW-2 Suresh Kumar was the conductor in the bus. He has deposed that the car came from opposite side and struck against the bus. He has stated that the accident has taken place due to rash and negligent driving of the car driver who was under the influence of liquor. He apologized for his mistake. The bus driver was not at fault.

It has come in evidence that in the car besides petitioner her mother-in-law and husband who was driving the car were travelling when accident took place. At the time of the accident as per petitioner many persons gathered on the spot. The petitioner has also stated that she, her husband and mother-in-law sustained injuries in the accident. The defence of the respondents is that the accident has taken place due to rash and negligent driving of the car driver who was under influence of liquor and he apologized for his mistake at the time of accident. The defence version is plausible. It is not understandable that if car driver i.e. husband of the petitioner was not under the influence of liquor why the FIR was not lodged by him and it was lodged by the mother-in-law of the petitioner. It appears the husband of petitioner was not in a position to lodge FIR and therefore, the FIR was lodged by the mother-in-law of the petitioner. It has come in the evidence of the respondents that car driver, husband of the petitioner, admitted his mistake and apologized for that at the time of accident. The car driver has not come in the witness box, therefore, adverse inference is to be drawn against the petitioner. The FIR Ex.PA, cash memo Ex.PB and receipt of hospital Ex.PC have been merely tendered in evidence by the counsel and these documents have not been proved. There is nothing on

record to show that the accident had taken place due to rash and negligently driving of the bus driver. The learned Tribunal has rightly appreciated the evidence on record in returning the finding that the accident had not taken place due to rash and negligent driving of the bus driver rather accident had taken place due to rash and negligent driving of the car driver. Once the accident has not taken place due to rash and negligent driving of the bus driver, therefore, petitioner is not entitled to any compensation from respondents. She did not implead her husband as respondent in the case.

The petitioner has failed to make out any case for interference.

No other point was urged.

In view of above discussion, the appeal is dismissed. Impugned award is upheld with no order as to costs.

(Kuldip Singh)
Judge

May 9 , 2007
(sks)